

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of Section 26)
of the Cable Television Consumer)
Protection Act of 1992)
)
Inquiry into Sports Programming)
Migration)

PP Docket No. 93-21

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COMMENTS OF TURNER BROADCASTING SYSTEM, INC.

In response to the Commission's Further Notice of Inquiry into sports programming migration, Turner Broadcasting System, Inc. ("TBS") submits comments. We reassert the conclusion of our March 29, 1993 comments in response to the Initial Notice of Inquiry: TBS's own experience does not support the position that cable network or superstation carriage of professional sports has caused a decline in over-the-air sports broadcasting.

This filing will not recreate the statistics TBS submitted last year where no significant changes have occurred. Instead, we will focus on new sports telecasting contracts and any changed circumstances.

I. NEW PROFESSIONAL SPORTS CONTRACTS WITH CABLE HAVE NOT REDUCED BROADCAST AVAILABILITY

A. New National Basketball Association ("NBA") Contract with TBS Expands Television Availability of NBA Games.

TBS has signed a new four-year television agreement with the NBA which will begin with the start of the 1994-95 season and run through the 1998 playoffs. The new agreement is materially different from the past contract in several ways. First, local Atlanta Hawks games will no longer be shown on TBS SuperStation. TBS will license those games for local over-the-air carriage and for regional cable carriage on SportSouth. Instead, TBS

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SuperStation will join its sister network, TNT, in carrying regular season NBA games and a limited number of early playoff games.

Specifically, TNT will carry 45 regular season games (down from 50). TBS SuperStation will carry 25 regular season games on Thursday nights which previously had been untelevised nationally. TNT will continue to carry 35 early playoff games. In a significant change, TBS SuperStation will add 10 "new" playoff games. Television viewers clearly will gain because TNT and TBS SuperStation will carry competing playoff games. Previously, when two playoff games occurred at the same time, only one was shown on national television on TNT. Now, basketball fans will be able to choose either the TNT or the TBS SuperStation playoff game or switch between the two.

As we indicated in our previous filing, cable telecasts and the attendant rights fees have been extremely important to the revival of basketball's public popularity and to the sport's improved fiscal state. Nothing in the newly-signed contracts has changed that trend. In fact, during a time when other sports television rights fees are decreasing by as much as 50%, the NBA's cable and broadcast rights fees have increased significantly. Yet, local television and radio revenues have not suffered as a result of the NBA's high cable profile. Since the 1978 season, local TV and radio revenues have more than doubled.^{1/} While, as the FCC's interim study notes, some minor diminution of local basketball broadcasts may have occurred; on balance, cable carriage of professional basketball games cannot be characterized as other than a stunning success for the NBA and for basketball fans.

^{1/} Broadcasting and Cable, Oct. 4, 1993, p. 47.

B. The New Cable NFL Package is Additive to Network Professional Football ("NFL") Broadcasts.

TNT has successfully renegotiated its four-year agreement with the NFL to televise the first half of the season of Sunday night professional football games for four additional years, beginning with the 1994 season.^{2/} The NFL created Sunday night coverage specifically for cable distribution. Local and national football broadcasts have not decreased. Instead, our renewed contract for continued carriage of previously untelevised games fully supports the FCC's tentative conclusion that cable telecasts of professional football has not diminished local over-the-air broadcasts but has brought cable viewers increased football viewing choices.

C. The New NFL Package for Sports Bars, Restaurants and Satellite Dish Owners is also Additive.

We do not attempt to address the specifics of the new NFL package. The NFL itself is the best source for detailed information. TBS will briefly comment in our role as both a commercial and a direct-to-the-home distributor for the new NFL package.

For years, the backhaul feeds of regionally televised football games have been taken down by sports bars and satellite dish owners without compensation to the NFL. The NFL initially announced its intention to scramble the game backhauls with no replacement package of these games to be available for purchase. Thus, sports bars and satellite dish owners would no longer have access to games they had become accustomed to seeing. The NFL's announcement met with political resistance. As a result, the NFL temporarily withdrew its

^{2/}ESPN became the first cable network to carry NFL games in 1987. In 1990, the NFL doubled its package of Sunday night games. ESPN continued its carriage of the second half of the football season and TNT was added to telecast the first half of the season. The same arrangement has been negotiated for the 1994-97 seasons.

scrambling plans. Under its current plan, the NFL games will be scrambled, but a "backhaul" package will be available for purchase.

The final details of the package have not been reported. But package purchasers will have available approximately 10-12 different NFL games each Sunday for the seventeen weeks of the regular football season. TBS has negotiated domestic and certain international rights to distribute the NFL package to both commercial establishments and to individual backyard dish viewers.^{3/} The Commission has requested information on the costs of the NFL package. However, final price and packaging decisions have not yet been made, but should be available within the next 1-2 months.

The emergence of this "backhaul" package is not now affecting the availability of local over-the-air broadcasts. The sports blackout rules fully apply to protect the local gate. And, no available evidence would suggest any future diminution of local broadcasts.

D. The Record does not Support Allegations of Superstation Harm to Baseball.

The TBS 1993 filing noted that local broadcast of baseball games has increased concomitantly with the rise of superstations. In fact, since 1975, the number of local baseball broadcasts has increased over 50%. When combined with cable carriage of local baseball games via regional sports networks, sports fans have seen nearly a tripling of the number of local-team baseball games available to them. These increases fly in the face of Major League Baseball's ("MLB") allegations that superstations weaken non-superstation baseball teams in their local markets.^{4/}

^{3/}ESPN will also sell to the commercial market. Several other distributors will serve the backyard dish market.

^{4/}A more detailed rebuttal of MLB's claims can be found in the TBS March 1993 filing.

1. Increases in Superstation Carriage of Baseball are the Result of a Changing Television Marketplace.

While no evidence exists to support the contention that superstation carriage decreases the number of baseball games available to fans locally over the air, available evidence does suggest that prohibiting superstations from televising local baseball would decrease the number of baseball games available to fans locally over the air.

A slight shift of baseball toward regional and national superstations has occurred over the past few years. For example, WGN, which originally carried only the Cubs, now carries both the Cubs and White Sox; KTLA, a regional superstation, carries both the Angels and the Dodgers. Additional teams have migrated to superstations because the other broadcast outlets in local markets have become unavailable. The reasons for this shift are threefold: (1) the frequency of baseball games; (2) ratings for baseball games which do not approach those of prime time network entertainment programming; and (3) a changing broadcasting marketplace.

The programming format of independent stations, which includes superstations, is compatible with baseball carriage. Network-affiliated broadcast station formats, which have highly-rated original entertainment programming, are less compatible. Baseball teams play 162 games per season. Most of these games occur in the evening during television's prime time hours. Ratings of regular season games generally do not match those of network prime time fare. The high number of baseball games played, combined with lower ratings than network programming receives, causes few network affiliates to carry local baseball games.

The emergence of Fox as a fourth network also has changed the market for local baseball carriage. Previously-independent stations, now affiliated with Fox, broadcast prime time programming that interferes with local baseball carriage. As a result, a remaining

independent station in the market, sometimes a superstation, may be the only good local broadcast station to pick up the local baseball contract.

Superstations enhance local broadcast of baseball because they remain a reliable bidder in the local market for baseball broadcast rights as others leave that market. In fact, the average superstation provides local fans between 75 and 142 games, while the average baseball flagship station carries between 50 and 75 games per year. More fundamentally, in many cases superstations may be the only local broadcast media willing to bring local viewers any significant number of games.

This trend toward superstations and toward regional cable sports networks may accelerate if the plans of Paramount and Time-Warner to establish new "networks" come to fruition and remove still more local broadcasters from the bidding for baseball. The incompatibility of network programming with high volume sports was highlighted in a recent Broadcasting and Cable article entitled "Five More for Warner's Fifth." The article states that Warner Bros.' coverage of TV homes increases from 42.1% to 73% when the cable coverage of superstation WGN is factored in. Interestingly, Warner executive Jaime Kellner acknowledges later in the article that the deal with WGN can only be continued "until the Warner Bros. Network starts bumping into their [WGN's] sports programming, which should happen when we expand to three nights. . . ."^{5/} Sports programming is an historic strength for superstations, so WGN may well opt for its sporting events over network affiliation, but WGN's current sports lineup and a three-night network programming format are not likely to co-exist.

^{5/}Broadcasting and Cable, April 4, 1994, p. 6.

A similar analysis was found in the April 4, 1994 edition of Multichannel News, which spotlighted the Baltimore Orioles' television deal as a model for the future. The Orioles have contracted with Home Team Sports to produce telecasts for both cable and broadcast TV (78 and 72, respectively). According to the article, ". . .the team was concerned with available broadcast outlets with independent stations becoming affiliates of FBC or the network efforts by Paramount Communications and Warner Bros., and Big 3 network affiliates facing more pressure to not pre-empt programming." The conflict between network programming and sports coverage is obvious and is -- at least potentially -- poised to increase in the future.

Especially with the potential rise of new networks, superstations -- which are, after all, local broadcast stations first -- may be the best outlet in their market for local carriage of baseball games. Without superstation baseball carriage, local fans along with fans in sports-short areas of the country would be deprived of games they have been receiving since the late 1970s. Further, it is impossible to know precisely what effect superstation baseball has had on pay-per-view packaging of baseball games, but so long as superstation baseball continues to exist, viewers will have a far less expensive option than pay-per-view to receive a reasonable number of games.

2. Major League Baseball is Compensated for Distant Carriage.

Since the inception of the cable compulsory license in 1976, Major League Baseball has received compensation from the compulsory license pool for distant carriage of superstation baseball games. MLB's share of the copyright pool now exceeds \$20 million per year. Additionally, for the past ten years, the League has received additional

compensation from individual superstation teams amounting to approximately \$30 million for the 1993 season. The Braves' own five-year contract with MLB, which expired at the end of the 1993 season, required Braves' payment of \$53.5 million from 1989-93. These revenues were divided equally among all MLB teams. No new agreement has been reached yet between the Braves and MLB. Since no agreement is legally necessary for superstation baseball telecasts, TBS SuperStation carriage is continuing subject solely to the conditions of the compulsory license until a new agreement is reached.

3. The Compulsory License Balances Baseball's Antitrust Exemption.

TBS shares the views of MLB and the professional sports leagues that the antitrust immunity granted through the Sports Broadcasting Act^{6/} has helped the financial stability of both the leagues and the individual sports teams by making possible orderly structures for television rights negotiations and rights fees distribution among the member teams. However, since the beginning of satellite broadcasting, the compulsory license has served as an important counterbalance to the sports leagues' antitrust immunity. Without the compulsory license, Major League Baseball along with other sports leagues could, and by all evidence, would, prevent superstation sports carriage.

E. Sports Programming on Pay-Per-View

The Commission has asked sports leagues and individual teams for comments on their plans for offering pay-per-view sports events should cable systems develop expanded channel capacity. TBS cannot speak for the sports leagues of which we are members. However, neither of the professional sports teams which TBS owns (the Atlanta Braves and the Atlanta Haws) has any current plans to develop a pay-per-view sports package.

^{6/}Public Law 87-331, 15 U.S.C. §§ 1291-1295.

F. Regional Sports Networks.

The Commission has also requested information on regional sports networks' pricing and tiering and on preclusive college football telecast contracts. TBS is part-owner and the managing partner of SportSouth, a regional sports cable network serving the southeastern United States. Over 95% of SportSouth's carriage is on basic or expanded basic tiers. In the few cases where SportSouth is carried in a la carte tiers, the retail customer price is determined by the individual cable operator.

SportSouth does carry exclusive college football games (e.g., the Southern Conference and the Ohio Valley Conference). However, these are new college football packages put together for SportSouth. The games provide additional choices to viewers since the SportSouth games were not previously available on broadcast television.

CONCLUSION

TBS concurs with the Commission's tentative conclusion that no sports migration has occurred at the national level and that any migration which has occurred at the local level has been "isolated and relatively slight." Nothing in TBS's experience over the past year suggests a different conclusion.

To the extent that the establishment of new broadcast network results in fewer independent stations to televise high volume sporting events, the importance of superstations as local sports providers will increase.

Superstations give out-of-market viewers a low-cost alternative to often more expensive regional sports networks or pay-per-view sports programming. A strong argument can be made that superstation carriage of sports programming may impede the movement of

sports to more expensive media by giving many viewers adequate sports coverage at a low cost.

Respectfully submitted,

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